IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA.

RFA No.148 of 1999.

Judgment reserved on:07.11.2007

Date of Decision:December 13, 2007

H.P.State Forest Corp. Ltd. …Appellant.

Versus

M/s.Mahesh Sachdeva of Vishal Sales …Respondent.

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The Hon'ble Mr. Justice Kuldip Singh,Judge

Whether approved for reporting?[1] Yes

For the appellants : Mr.Neel Kamal Sood, Advocate.

For the respondents : Mr.Dushyant Dadwal, Advocate.

Kuldip Singh, Judge.

The plaintiff is in appeal against the judgment, decree dated 24.11.1998 passed by learned District Judge, Chamba in Civil Suit No.3 of 1995 dismissing the suit of the appellant / plaintiff for recovery of Rs.3,11,459.

2. The facts, in brief, are that appellant / plaintiff on 1.6.1991 floated short term tender notice for supply of 50,000 empty tins at Central Depot, Shahpur, District Kangra. The tender of Mahesh Sachdeva, sole proprietor of respondent / defendant firm, for supply of 50,000 tins at the rate of Rs.18.84 per tin was accepted and an agreement to this effect

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[1] ***Whether reporters of Local Papers are allowed to see the Judgment***? Yes

was executed on 10.7.1991 between appellant and respondent. As per agreement, the respondent was required to supply 60% of total tins by 20.7.1991 and remaining 40% of the total tins by 15.8.1991. The respondent supplied only 5000 tins by 30.8.1991. Thereafter the security deposit of respondent firm was forfeited and agreement was cancelled on 21.2.1992.

3. The further case of the appellant is that appellant / Corporation was in urgent need of empty tins, therefore, the appellant floated fresh short term tender notice on 9.8.1991 for supply of 45,000 empty tins, which were purchased by appellant from M/s.Himachal Sheera Supply Company, Dalhousie Road, Pathankot at the rate of Rs.23.50 per tin. It is the case of the appellant that due to the failure of respondent to supply the tins, as per the agreement, the appellant has suffered a loss of Rs.4.66 per tin. In these circumstances, the appellant has claimed a sum of Rs.3,09,700 from the respondent firm on account of cost of 45,000 tins at the rate of Rs.4.66 per tin. The appellant has also claimed interest at the rate of 18% per annum from the appellant and, therefore, the appellant filed a suit for recovery of Rs.3,11,459 against the respondent.

4. The respondent firm contested the suit and has submitted that there is no breach of agreement on the part of the firm. The agreement was breached by the respondent by floating tender on 9.8.1991 even though the respondent was required to supply the tins by 15.8.1991. The appellant without cancelling the agreement executed with the respondent, illegally accepted the tender of other firm. The appellant extended the agreement of the respondent and it was

cancelled only on 21.2.1992. The purchase of 45,000 tins by appellant was unwarranted, uncalled for and was only to favour third party. The respondent is not responsible for alleged loss caused to the appellant for purchasing 45,000 tins, but the same has been caused on account of illegal act, conduct and deeds of officials of appellant. The respondent, thus, prayed for dismissal of the suit.

5. The following issues were framed:-

i) Whether the plaintiff is entitled to recovery of Rs.3,11,459 from the defendant as damages? OPP

ii) Whether the suit of the plaintiff is frivolous and the defendant is entitled for special costs under Section 35-B CPC? OPD

iii) Relief.

The learned District Judge dismissed the suit. Hence, this appeal.

6. I have heard learned counsel for the parties and gone through the record. The learned counsel for the appellant has submitted that learned District Judge has erred in dismissing the suit. The material on record has not been properly appreciated. The learned counsel for the respondent has supported the impugned judgment and decree.

7. Ext.P-4 is the agreement dated 10.7.1991 which was executed between the parties. As per agreement, the date of completion is 15.8.1991. The Clause 9 of the agreement provides that in the event of failure to abide by the conditions / terms of the agreement deed, the indenture shall be terminated / cancelled and the earnest money / security shall be forfeited. Balance empty tins shall be purchased from

the open market at the risk and cost of the successful tendrer, the excess amount so occasioned shall be recovered from the supplier through due process of law. Therefore, before going for risk purchase the appellant was required to terminate / cancel the agreement. In Para-7 of the plaint, the appellant has set up the case that since appellant was in urgent need of tins and the respondent was not ready and willing to supply the tins in time, therefore, appellant had no alternative but to float short term tender notice dated 9.8.1991 for supply of 45,000 tins.

8. PW-1, S.C.Gupta, Conservator of Forest, has stated that supply was extended up to 15.10.1991 vide letter Ext.P-6 but respondent made no response. He has also stated that on 9.8.1991 he again invited the tenders. The agreement was cancelled on 21.2.1992. M/s.Himachal Sheera Company was informed telephonically on 3.9.1991 to supply the tins. The agreement was signed by the said party on 5.9.1991. The appellant has not placed on record document canceling the agreement Ext.P-4 w.e.f. 21.2.1992. DW-1 Mahesh Sachdeva has stated that as per Ext.PX (it should be Ext.DX) the last extension was up to 15.11.1991. In 1992 when his tender was cancelled no notice was issued to him and straightway his security was forfeited and amount thereof was withdrawn from the Bank. As per clause 9 of agreement Ext.P-4, first of all agreement was to be cancelled and thereafter the appellant could go for risk purchase. In the present case, it is clear from the statement of PW-1 that agreement was executed by appellant with M/s.Himachal Sheera Company on 5.9.1991. The agreement for supply of tins by respondent was extended up to 15.11.1991 vide Ext.DX but the appellant has gone for purchasing the tins from M/s.Himachal Sheera Company during the

subsistence of agreement with the respondent. In doing so, if appellant has purchased 45,000 tins from M/s.Himachal Sheera Company over and above the rates settled with respondent for that respondent cannot be blamed. The appellant has otherwise not proved risk purchase of 45,000 tins from M/s.Himachal Sheera Company. Therefore, there is no question of any loss to appellant on account of alleged risk purchase. The appellant itself has breached the agreement, therefore, appellant cannot take benefit of its own wrong. The learned District Judge has appreciated the evidence on record rightly. No case for interference has been made out.

9. No other point was urged.

10. The result of the above discussion is that the appeal is dismissed with costs.

December 13, 2007 ***(Kuldip Singh), J.***

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